Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

LUIS ROSADO
Petitioner

v.

JEFFREY MERRILL, ET AL.
Respondents

Petition for Writ of Certiorari
to The United States Court of Appeals
For the First Circuit

PETITION FOR WRIT OF CERTIORARI

Timothy S. Murphy
Gardner, Gardner & Murphy
9 Beach Street
Saco, Maine 04072
(207) 284-2060

12 pp

QUESTION PRESENTED

Luis Rosado filed a Petition for Habeus Corpus in the United States District Court for the District of Maine. Rosado therein alleged his bind-over for trial as an adult by the State of Maine violated the United States Constitution's guarantee of Due Process because the decision was not based upon clear and convincing evidence. The Petition was denied by the United States District Court.

Rosado appealed that decision to the United States Court of Appeals for the First Circuit, which Court denied Rosado's appeal. The question presented here is:

May a 15 year old boy be stripped of his protected status as a juvenile in a transfer or bind-over proceeding initiated by the government where the burden of proof in such proceeding is a mere preponderance of evidence?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
OPINION BELOW	1
JURISDICTION	1
STATUTES INVOLVED IN THE CASE	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	3
IT IS A VIOLATION OF DUE PROCESS TO BIND-OVER FOR TRIAL AS AN ADULT A 15 YEAR OLD BOY EXCEPT UPON CLEAR AND CONVINCING EVIDENCE	
CONCLUSION	4
APPENDIX	5

TABLE OF AUTHORITIES

CASES

	Page
1. Santosky v. Kramer, 455 U.S. 745 (1982)	3, 4
2. Addington v. Texas, 441 U.S. 418 (1979)	4
3. Kent v. United States, 383 U.S. 541 (1966)	3, 4
4. United States v. I.D.P., 102 F.3rd 507 (11th Cir. 1996)	3, 4
5. U.S. v. Juvenile Male #1, 86 F.3rd 1314 (4th Cir. 1996)	4
6. U.S. v. T.F.F., 55 F.3rd 1118 (6th Cir. 1995)	3, 4
7. U.S. v. Doe, 49 F.3rd 859 (2nd Cir. 1995)	3, 4
8. U.S. v. Parker, 956 F.2d 169 (8th Cir. 1992)	3, 4
9. U.S. v. M.L., 811 F.Supp. 491 (D.C. Cal. 1992)	4
10. Ex Parte J.R., 582 So.2d 444, 446-47 (Ala. 1991)	4
11. State ex. rel Clatterback, 700 P.2d 1076, 1079 (Utah, 1985)	4
12. Matter of Seven Juveniles, 664 P.2d 947, 949-50 (Nev. 1983)	4

STATUTES AND RULES

1. United States Constitution, Fourteenth Amendment	2
2. 28 U.S.C. Section 1254(1)	1
3. 18 U.S.C. Section 5032, Juvenile Justice and Delinquency Prevention Act	3, 4
4. 15 M.R.S.A. Section 3101(E)	2, 3
5. Supreme Court Rule 13.1	1

PETITION FOR WRIT OF CERTIORARI

Luis Rosado respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on March 26, 1997, in order to resolve the important issue presented herein.

OPINION BELOW

The opinion of the United States Court of Appeals for the First Circuit that gives rise to this Petition is a decision dated March 26, 1997. It is re-printed in the Appendix, attached herein. By that decision, the Court denied Petitioner's appeal of the United States District Court's denial of a Writ of Habeus Corpus.

JURISDICTION

Luis Rosado filed a Petition for Writ of Habeus Corpus on March 12, 1996. On September 6, 1996 the United States Magistrate recommended a denial of Rosado's Petition. The United States District Court affirmed by Order the Magistrate's recommended decision on October 11, 1996. Petitioner timely appealed to the United States Court of Appeals for the First Circuit on October 31, 1996.

The United States Court of Appeals denied Rosado's appeal on March 26, 1997. Pursuant to Supreme Court Rule 13.1, this Petition for Writ of Certiorari has been filed within 90 days of the First Circuit's opinion. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. Section 1254(1).

STATUTES INVOLVED IN CASE

Maine Revised Statute Annotated, Title 15, Section 3101, as amended, provides:

> E. The Juvenile Court shall bind a juvenile over to the Superior Court if it finds:
> (1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it; and
> (2) By a preponderance of the evidence that, after a consideration of the seriousness of the crime, the characteristics of the juvenile and the dispositional alternatives available to the Juvenile Court, as specified in paragraph D, it is appropriate to prosecute the juvenile as if he were an adult.

The United States Constitution, Fourteenth Amendment, provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Luis Rosado, age 15 at the time of his arrest, was bound-over for trial as an adult on the charge of manslaughter. The Maine Juvenile Court found, upon a mere preponderance of evidence, pursuant to 15 M.R.S.A. Section 3101(E), that it was "appropriate" to terminate Rosado's juvenile status and bind him over for trial as an adult. Rosado appealed this decision through the Maine Supreme Judicial Court. That Court denied Rosado's appeal of the

Juvenile Court's bind-over order on January 2, 1996.

Luis Rosado thereafter timely petitioned for Writ of Habeus Corpus to the United States District Court contending therein that his bind-over for trial as an adult violated Due Process because the termination of his juvenile status could not occur except upon clear and convincing evidence. The United States District Court denied Luis Rosado's Petition because it concluded that Maine's "preponderance of evidence" standard as found in 15 M.R.S.A. Section 3101(E) satisfied the U.S. Constitution's requirement of Due Process, citing Santosky v. Kramer, 455 U.S. 745 (1982).

On appeal, the United States Court of Appeals for the First Circuit agreed that the burden of proof upon the government in a bind-over or transfer proceeding may be the mere preponderance of evidence standard, rejecting Rosado's argument that Due Process required the higher clear and convincing standard of proof. The Court, citing a comparable federal statute - 18 U.S.C. Section 5032, the Juvenile Justice and Delinquency Prevention Act, noted that three other circuits had rejected the argument that termination of juvenile status can only occur upon clear and convincing evidence, citing United States v. I.D.P., 102 F. 3rd 507 (11th Cir. 1996); United States v. T.F.F., 55 F.3rd 1118 (6th Cir. 1995); United States v. Doe, 49 F.3rd 859 (2nd Cir. 1995).

REASONS FOR GRANTING THE WRIT

I. It is violation of Due Process to bind-over for trial as an adult a 15 year old boy except upon clear and convincing evidence.

In Kent v. United States, 383 U.S. 541 (1966) the Supreme Court held that juvenile bind-overs or transfers are "critical" proceedings that determine"vital" rights of juveniles. Kent at 556;560. The Kent decision, however, left open the question of what standard of proof should be required of the government in

such bind-over or transfer proceedings.

Several recent decisions, however, have held that where "government initiated proceedings" threaten an individual "with a significant deprivation of liberty or stigma" or where "particularly important" interests are at stake, then in such government initiated proceedings Due Process requires clear and convincing evidence as the standard of proof. Santosky v. Kramer, 455 U.S. 745 (1982). See also Addington v. Texas, 441 U.S. 418 (1979).

The open question is whether a juvenile bind-over or transfer is one such government initiated proceeding where the burden of proof must be clear and convincing evidence. Four (4) circuit courts interpreting the Juvenile Justice and Delinquency Prevention Act, 18 U.S.C. Section 5032, have ruled that Due Process does not require the clear and convincing burden of proof in a juvenile transfer or bind-over proceeding. See United States v. I.D.P., 102 F.3rd 507 (11th Cir. 1996); United States v. T.F.F., 55 F.3rd 1118 (6th Cir. 1995); United States v. Doe, 49 F.3rd 859 (2nd Cir. 1995); and U.S. v. Parker, 956 F.2d 169 (8th Cir. 1992).

However, at least one United States District Court has ruled otherwise. See U.S. v. M.L., 811 F.Supp. 491 (D.C. Cal. 1992) and note U.S. v. Juvenile Male #1, 86 F.3rd 1314, 1322-23 (4th Cir. 1996) (stating "there is, however, no consensus among the Court of Appeals on the burden of proof at the transfer hearing.").

The states, including Maine, all have statutes with some similarity to the federal law found in 18 U.S.C. Section 5032, which provisions are themselves historical descendants of dicta from the Kent v. United States opinion. Some states require clear and convincing evidence. For example, State ex rel. Clatterback, 700 P.2d 1076, 1079 (Utah 1985) ("We agree that whether a juvenile is to be transferred to the adult system is a critically important question...."); Ex Parte J.R., 582 So.2d 444, 446-47 (Ala.1991) (Citing Kent as authority that transfers 'determine vitally important statutory rights of juveniles'); Matter of Seven Juveniles, 664 P.2d 947, 949-50 (Nev. 1983) (Citing Kent as

persuasive authority). Others, including Maine, do not require the higher measure of proof, but are satisfied that the mere preponderance standard passes Due Process muster.

As Congress considers toughening juvenile justice laws, it is timely to consider and resolve the open question of what burden of proof must be met by the government, both state and federal, before a 15 year old boy is tossed into the hurly-burly of our adult criminal justice system; before other children are irrevocably stripped of their protected status on juveniles.

CONCLUSION

For the foregoing reasons, Petitioner prays the Court grant this request for Writ of Certiorari.

Dated at Saco, Maine this 16th day of June, 1997.

Timothy S. Murphy
Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 96-2310

LUIS ROSADO,
Appellant,

v.

CORRECTIONS, ME WARDEN, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE
[Hon.Gene Carter, U.S. District Judge]

Before

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
and Boudin, Circuit Judge.

Timothy S. Murphy and Gardner Gardner & Murphy on brief for appellant.
Andrew Ketterer, Attorney General, Mary M. Sauer and Charles K. Leadbetter, Assistant Attorneys General, on brief for appellees.

March 26, 1997

Per Curiam. Petitioner Luis Rosado has filed an application for a writ of habeus corpus under 28 U.S.C. Section 2254. In it, he argues that the Maine statute setting forth the circumstances under which a juvenile may be prosecuted as an adult, see 15 M.R.S.A. Section 3101(4), violates due process because it directs the juvenile court to use a preponderance of the evidence standard in determining when such prosecution is required; Rosado maintains that the Constitution mandates a standard of clear and convincing evidence. The District Court denied the application for the writ on the merits, but granted a certificate of probable cause to appeal.

We treat this certificate as a recommendation that we issue a certificate of appealability ("CAP") under 28 U.S.C. Section 2253, as amended by the Antiterrorism and Effective Death Penalty Act of 1996. See 28 U.S.C. Section 2253(c)(1)(B). We agree that a substantial question is presented and therefore grant Rosado's request for a CAP. However, since we believe that oral argument would not be of significant assistance – the parties have fully briefed the case and the issue turns on parsing Supreme Court precedents – we proceed directly to the merits.

Three circuit courts of appeal have addressed the same question in relation to the federal transfer provision contained in the Juvenile Justice and Delinquency Prevention Act. See 18 U.S.C. Section 5032. These courts hold that a preponderance of the evidence standard is all that due process requires. See United States v. I.D.P., 102 F.3d 507, 513-14 (11th Cir. 1996); United States v. T.F.F., 55 F.3d 1118, 1122 (6th Cir. 1995); United States v. Doe, 49 F.3d 859, 868 (2d Cir. 1995). We agree with the result reached by these courts. Because the cases adequately set out the relevant analysis, including reference to the pertinent Supreme Court cases, we see no reason to repeat it here, but we believe that a published opinion by this court may be useful to district courts in this circuit.

Finally, Rosado cites a number of state cases in support of his position that due process requires a clear and convincing evidence

standard. Examination reveals that the courts in these cases either adopted such a standard by court rule or by reference to a state statute so providing; the courts that did consider due process claims did not decide what minimum standard of proof was required.

The judgment of the district court is affirmed.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

LUIS ROSADO
Petitioner

v.

JEFFREY MERRILL, ET AL.
Respondents

Petition for Writ of Certiorari
to The United States Court of Appeals
For the First Circuit

SUPPLEMENTAL APPENDIX

Timothy S. Murphy
Gardner, Gardner & Murphy
9 Beach Street
Saco, Maine 04072
(207) 284-2060

14 pp

TABLE OF CONTENTS

Recommendation of U.S. Magistrate 1

Order of U.S. District Court 11

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LUIS ROSADO,	]	
Petitioner	]	
	]	
v.	]	CIVIL DOCKET NO. 96-58-P-C
	]	
WARDEN, MAINE STATE PRISON, et al.	]	
	]	
	]	
Respondents	]	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Luis Rosado seeks a writ of habeas corpus pursuant to 28 U.S.C. §2254 in connection with his conviction in the Maine Superior Court (York County) (Criminal Docket No. CR-93-1744) on a charge of manslaughter. The petitioner was 15 years old at the time of the incident giving rise to the conviction. His petition challenges the quantum of proof required under the Maine Juvenile Code for determining that he would be prosecuted as an adult. Because I conclude that the "preponderance of the evidence" standard set forth in the statute meets the requirements of due process, I recommend the court deny the petition.

I. Background

The grim circumstances that give rise to this proceeding are not in dispute, at least for present purposes, and are well summarized in the Law Court's opinion affirming the petitioner's criminal conviction:

> On April 21, 1992, Rosado, then fifteen years old, and a number of other juveniles were walking down a Saco street when Donald Farda came out of a neighboring house in

> response to the commotion generated by the young people. A confrontation ensued. One of the juveniles carried a bat, which at Rosado's urging was passed to him. Rosado swung the bat at Farda, striking him in the back of the head. Farda died nine days later from trauma induced by the blow.

State v. Rosado, 669 A.2d 180, 181-82 (Me. 1996).

Thereafter, the state filed a juvenile petition in the Maine District Court in Biddeford charging the petitioner with manslaughter, i.e., recklessly or with criminal negligence causing the death of another, in violation of 17-A M.R.S.A. §203 (1) (A).[1] Manslaughter is a Class A crime, id. at (3), and therefore punishable when committed by an adult offender with up to 40 years in prison, 17-A M.R.S.A. §1252(2)(A). Pursuant to the Maine Juvenile Code, 15 M.R.S.A. §3001 *et seq.*, the District Court in certain circumstances is required to waive its jurisdiction as the Juvenile Court, and thus cause a juvenile defendant to be prosecuted as an adult, when the charge involves murder or a Class A, B or C crime, *id.* at §3101(4)(A). The Juvenile Court may take such a step at the request of the prosecuting attorney, after conducting a bind-over hearing. *Id.* The court conducted such a hearing on October 7 and 8, 1992, and thereafter found by a preponderance of the evidence that it was appropriate to prosecute the petitioner as an adult. Juvenile Court Decision at 9.

The Petitioner appealed the bind-over determination to the Maine Superior court, which affirmed.[2] Adult criminal proceedings in the Superior Court ensued by indictment returned on December 8, 1993, and the petitioner ultimately entered a conditional plea of guilty pursuant to M.R. Crim.P. 11(a)(2) to facilitate appeal of the

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[1] The record of the proceedings in the Maine District Court, exercising its jurisdiction as the Juvenile Court, appear in the records here as Attachment 1 to the state's response to the habeas petition (Docket No. 3) ("Response"). Included in the attachment are the court's docket record, the juvenile petition, the transcript of the bind-over hearing conducted on October 7 and 8, 1992, and the court's written decision finding that the petitioner should be prosecuted as an adult.

[2] The record of the Superior Court proceedings that led to the affirmance of the bind-over determination appears in the record here as Attachment 2 to the Response.

bind-over determination to the Law Court.[3] The Superior Court imposed a sentence of 15 years' imprisonment, with all but 13 years suspended, followed by six years of probation. After granting the petitioner leave to appeal his sentence, see 15 M.R.S.A. §2152 (providing for discretionary review of sentencing decisions), the Law Court affirmed the sentence and rejected the petitioner's contention that the Juvenile Court abused its discretion and that the standard of proof for bind-over determination is violative of due process. *Rosado*, 669 A.2d at 183-85.

The petitioner remains incarcerated at the Maine State Prison. The state confirms that he has exhausted the remedies available to him in state court as to the issue raised in his petition, satisfying the requirement set forth in 18 U.S.C. §2254(b) and (c).

II. Due Process

The sole issue raised in the petition is whether the standard of proof, as set forth in the Maine Juvenile Code for binding a youthful defendant over for prosecution as an adult, is consistent with the Due Process Clause of the Fifth And Fourteenth Amendments to the Constitution. The Supreme Court has set forth three factors that must be considered in assessing whether a challenged procedure withstands due process scrutiny:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)

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[3] The record of the criminal proceedings in the Superior Court appears in the record here as Attachment 3 to the Response.

The Court has not yet had occasion to apply these factors to the problem presented by this case; indeed, the Court "has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to transfer a juvenile for trial in adult court." *Breed v. Jones*. 421 U.S. 519, 537 (1975). However, the Court has observed that "the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile", and therefore the federal statute analogous to the one at issue here, "read in the context of constitutional principles relating to due process," requires a hearing prior to the bind-over determination. *Kent v. United States*, 383 U.S. 541, 556-7 (1966).

Elsewhere, the Court has made clear that the standard of proof applied by a tribunal has important consequences for the guarantee of due process.

> "The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'"...[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgement about how the risk of error should be distributed between the litigants.

Santosky v. Kramer, 455 U.S. 745, 754-55 (1982) (quoting *Addington v. Texas*, 441 U.S. 418, 423 (1979), and *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)). Therefore, in certain proceedings the court must make its findings by clear and convincing evidence, as opposed to simply the preponderance of the evidence, because in those contexts due process requires a higher level of factual certainty "than that necessary to award money damages in an ordinary civil action." *Santosky*, 455 U.S. at 747. These include proceedings to terminate the rights of parents

in their natural child, id., and the involuntary commitment of an adult to a mental institution. *Addington*, 441 U.S. at 432-33.

To my knowledge, every court that has considered the question has reached the conclusion that, in the absence of a statutory directive, the principles set forth in *Eldridge* and *Santosky* do not require an elevated standard of proof in juvenile bind-over proceedings. See e.g., *United States v. Juvenile Male #1*, 86 F.3d 1314, 1323 (4th Cir. 1996); *United States v. T.F.F.*, 55 F.3d 1118, 1122 (6th Cir. 1995); *United States v. Doe*, 49 F.3d 859 (2d Cir. 1995); *United States v. Parker*, 956 F.2d 169, 171 (8th Cir. 1992); *State v. Riccio*, 540 A.2d 1239, 1241-42 (N.H. 1988); *Colorado in the Interest of A.D.G.*, 895 P.2d 1067, 1072 (Colo. App. 1994). *cert. den.* (1995); *W.M.F. v. Alaska*, 723 {.2d 12987, 1301 (Alaska App. 1986); *Washington v. Jacobson*, 656 P.2d 1103, 1104-05 (Wash. App. 1982); *In re Appeal in Maricopa Cty. Juvenile Action No. J-93117*, 654 P.2d 39, 44 (Ariz. App. 1982); *In re Bobby C.*, 426 A.2d 435, 438-39 (Md.App. 1981). Likewise, the Law Court squarely rejected the petitioner's due process argument in his direct appeal, noting that "[a] bind-over does not foreclose the juvenile defendant's other interests but merely designates the further legal process by which the juvenile's rights will be addressed" and therefore, "no compelling or fundamental right of the juvenile [is] at risk." *Rosado*, 669 A.2d at 183.

The Maine Juvenile Code requires the Juvenile Court to bind a defendant over to the Superior Court for trial as an adult when two conditions are satisfied. First, the Juvenile Court must find that probable cause exists to believe that the defendant committed murder or what would be a Class A, B or C crime if subject to adult prosecution.[4] 15 M.R.S.A. §3101 (4)(E)(1). Second, the court must

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[4] The petitioner does not challenge this aspect of the statute, nor contend that the Juvenile Court erred in its finding of probable cause.

find, "[b]y a preponderance of the evidence that, after a consideration of the seriousness of the crime, the characteristics of the juvenile and the dispositional alternatives to the Juvenile Court... it is appropriate to prosecute the juvenile as if he were an adult."[5] *Id.* at (4)(E)(2).

Particularly in cases such as this one, where the ultimate issue of guilt or innocence does not appear to be seriously in question, it would be difficult to understate the significance of the Juvenile Court's bind-over determination. While, as the Law Court noted, a person prosecuted in Juvenile Court for murder, or a Class A, B or C crime, does not enjoy the confidentiality provision that shield youths prosecuted for lesser offenses, see 15 M.R.S.A. §3307(2)(A), 3308(2); *Rosado*, 669 A.2d at 183, in every other respect the consequences for a person prosecuted as a juvenile in connection with such a crime are likely to be less severe than under the Maine Criminal Code. Juveniles subject to incarceration are committed to the Maine Youth Center for an indeterminate period, but in no circumstances may this period extend beyond the juvenile's 21st birthday. 15 M.R.S.A. §3314(1)(F), 3316(2). As noted, *supra*, persons convicted of Class A crimes as adults

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[5] The statute further elaborates on these criteria as follows:

> (1) Seriousness of the crime: The nature and seriousness of the offense, greater weight being given to offenses against the person than against property; whether the offense was committed in an aggressive, violent, premeditated or willful manner;
>
> (2) Characteristics of the juvenile: The record and previous history of the juvenile; his emotional attitude and pattern of living; and
>
> (3) Dispositional alternatives: Whether future criminal conduct by the juvenile will be deterred by the dispositional alternatives available to the Juvenile Court would diminish the gravity of the offense; and whether the protection of the community requires commitment of the juvenile to a facility which is more secure than those available as dispositional alternatives to the Juvenile Court.

15 M.R.S.A. §3101(4)(D).

face incarceration for up to 40 years. Moreover, the Juvenile Code expressly provides that "[a]n adjudication of the commission of a juvenile crime shall not be deemed a conviction of a crime" for purposes of potential civil liability and exclusion from the Armed Services and public office. 15 M.R.S.A. §3310(6) and Commentary (1979).

A youth accused of manslaughter is therefore at a crossroads when he comes before the court for his bind-over hearing. That, however, does not dispose of the question. "[T]here is no constitutional right to any preferred treatment as a juvenile offender" and therefore no constitutional infirmity to a system that vests the prosecution with the discretion, "devoid of most due process guarantees," to decide whether to try a youthful defendant as an adult. *Stokes v. Fair*, 581 F.2d 287, 289 (1st Cir. 1978) (citations omitted), *cert. denied*, 439 U.S. 1078 (1979). Whether or not a juvenile is bound over for eventual trial as an adult, the child still enjoys the right to a trial on the merits where the state must make its case beyond a reasonable doubt. See *Winship*, 397 U.S. at 368 (reasonable doubt standard required in juvenile adjudications); *Parker*, 956 F.2d at 171 (contrasting "adjudication of status" with "adjudication of guilt or innocence"); *A.D.G.*, 895 P.2d at 1072. Thus a bind-over determination does not dispose of the ultimate issue presented by the case, in contrast to the termination proceeding at issue in *Santosky*. *Doe*, 49 F.3d at 868; *Riccio*, 540 A.2d at 380; *Bobby C.*, 426 A.2d at 438.

In the context of any criminal case, one particular procedural juncture may ultimately prove to be the critical one. The prosecutor, in the exercise of her or his discretion, may opt not to present the case to the grand jury. The trial court may grant or deny a pretrial motion to suppress key evidence. An adult sentencing determination might lead to a 40-year sentence for particularly heinous Class A crimes, or the court might decide that no incarceration was necessary at all. A bind-over determination is analogous to a sentencing proceeding because it involves not simply the finding of facts, but the manner in which the rehabilitative and other societal goals set forth in the relevant statute should operate in light of the factual findings. *A.D.G.*, 895 p.2D AT 1070. Although such decisions present difficult

questions, they do not mark the point in a proceeding at which a significant or fundamental liberty interest is at stake. *Riccio*, 540 A.2d at 380; *cf. Addington*, 441 U.S. at 429 (preponderance standard required where court must find not only facts, but also determine their meaning, and result in involuntary commitment to mental hospital). Accordingly, the bind-over hearing may be distinguished from the termination proceeding at issue in *Santosky* or the civil commitment determination at issue in *Addington*.

It is doubtless a difficult task for a court to decide whether to expose a 15-year old boy to adult criminal prosecution for allegedly causing the death of another person. In essence, the court must try to predict the future, and decide whether a child whose life has gone awry has the potential to right himself in the juvenile justice system. But, as the Supreme Court has recently noted in a different context, "while the difficulty of ascertaining where the truth lies may make it appropriate to place the burden of proof on the proponent of an issue, it does not justify the additional onus of a especially high standard or proof." *Cooper v. Oklahoma*, 116 S.Ct. 1373, 1382 (1996). "A heightened standard does not decrease the risk of error, but simply reallocates the risk between the parties." *Id.*, (citation omitted.) The interest at issue here does not justify the reallocation proposed by the petitioners. I therefore conclude that the "preponderance of the evidence" standard, as specified in the Maine Juvenile Code for determining when a juvenile should be bound over for prosecution as an adult, is consistent with the constitutional mandate of due process.

III. Conclusion

For the foregoing reasons, I recommend that petition for a writ of habeas corpus be DENIED without a hearing.

NOTICE

A party may file objections to those specific portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. §636(b)(1)(B) for which de novo review by the district court sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 6th day of September, 1996.

David M. Cohen
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LUIS ROSADO,	]	
Petitioner	]	
	]	
v.	]	CIVIL DOCKET NO. 96-58-P-C
	]	
JEFFREY MERRILL, Warden of Maine State Prison,	]	
	]	
and	]	
	]	
JOSEPH LEHMAN, Commissioner of Department of Corrections,	]	
	]	
Respondents	]	

ORDER AFFIRMING THE RECOMMENDED
DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge having filed with the Court on September 6, 1996, with copies to counsel, his Recommended Decision on Petition for Writ of *Habeas Corpus* (Docket No. 4); and Petitioner having filed his Objection thereto on September 19, 1996 (Docket No. 5); and this Court having reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; and this Court having made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision, and concurring with the recommendations of the United States magistrate Judge for the reasons set forth in his Recommended Decision, and having determined that no further proceeding is necessary; it is ORDERED as follows:

(1) The Objection of the Petitioner is hereby DENIED;
(2) The Recommended Decision of the Magistrate Judge is hereby AFFIRMED;

and

(3) The Petition for a Writ of *Habeas Corpus* is hereby DENIED without a hearing.

GENE CARTER
Chief Judge

Dated at Portland, Maine this 11th day of October, 1996.